

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CULLAN AND CULLAN LLC, individually
and on behalf of all others similarly situated;

Plaintiff,

v.

M-QUBE, Inc. a Delaware corporation;
MOBILE MESSENGER AMERICAS, Inc., a
Delaware Corporation; CF ENTERPRISES
PTY., Ltd., an Australian Company; and
JOHN DOES 1-200,

Defendants.

8:13CV172

ORDER OF PRELIMINARY

APPROVAL

Pursuant to the Memorandum and Order entered this date,

IT IS ORDERED:

1. The proposed settlements as set forth in the Class Settlement Agreements ([Filing No. 166-1](#), Memorandum, Ex. 1; [Filing No. 168-1](#), Memorandum, Ex. 1) are incorporated herein and are preliminarily approved as within the range of reasonableness for a settlement that is fair, reasonable, and adequate, subject to a hearing for final approval pursuant to [Fed. R. Civ. P. 23\(c\)](#) and (e).

2. For purposes of the proposed settlements, the following settlement classes are certified:

The CF Enterprises Settlement Class is defined as:

[A]ll current and former Wireless Subscribers Nationwide, who at any time from January 31, 2011, to the Notice Date, received a text message from any Message Claim Shortcode or relating to a Message Claim Program. "Message Claim Shortcode" means the following shortcodes: 25872,

29104, 33288, 44329, 49712, and 70451. "Message Claim Program" means the following programs: searchyourhoroscope.com; tuneztogo.com; hearmemobile.com; myringtonespot.com; cellsafari.com; tonezgalore.com; urzodiachoroscopes.com; and fonezoneportal.com.

The Mobile Messenger Settlement Class is defined as:

[A]ll current and former Wireless Subscribers Nationwide, who (a) at any time from January 1, 2010, to the Notice Date, incurred any charge, whether paid or not, associated with any of the billing descriptors, shortcodes, and program names set forth on Exhibit B [to the Mobile Messenger Settlement Agreement and posted on the Settlement Website]; or (b) at any time from January 1, 2010, to the Notice Date, received any message from a Premium Short Code registered at the CTIA to (i) any organization recognized as exempt from federal income taxation under [I.R.C. § 501\(c\)\(3\)](#) or [I.R.C. § 501\(c\)\(4\)](#), or (ii) federal political committees registered with the Federal Election Commission.

3. Cullan and Cullan LLC is appointed Class Representative;
4. Ben Barnow and Ralph K. Phalen are appointed as Co-Lead Settlement Class Counsel.
5. Dahl Administration, LLC, is appointed Notice Specialist and Claims Administrator;
6. The parties' proposed notices and plan for notice of proposed class action settlement ([Filing No. 166-3](#), Ex. C; [Filing No. 168-3](#), Ex. C) are hereby approved as to form and substance.
7. The proposed Claim Forms attached as Exhibit A to the Settlements ([Filing No. 166-1](#), Ex. A; [Filing No. 168-1](#), Ex. A) are approved as to form and substance.

8. The Claims Administrator shall implement the notice plan and the parties or Claims Administrator shall file a certification of and description of the implementation of the notice plan within two weeks after the initial implementation of the plan.

9. The Claims Administrator shall provide the final settlement class notification results report to the court no later than 14 days before the date of the Final Fairness Hearing.

10. A Final Fairness Hearing is hereby set for March 2, 2017 at 9:00 a.m., in Courtroom No. 3, Roman Hruska United States Courthouse, 111 South 18th Plaza, Omaha, Nebraska 68102, to determine whether (i) the settlement set out in the Class Settlement Agreement should be finally approved as fair, reasonable, adequate, and in the best interests of the Settlement Class.

11. Within ten (10) days of the date of this order, defendants shall notify the appropriate federal and state officials of this proposed class settlement pursuant to [28 U.S.C. § 1715](#). Defendants shall file a certificate of compliance with respect to the CAFA Notice within 10 days thereafter.

DATED this 27th day of September, 2016.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge